

common law or equity applicable as between private parties in the courts of the United States. Reconsideration or a new hearing may be granted on all or any of the issues. Arguments already made and reinterpretations of old evidence are not sufficient grounds for granting reconsideration, for altering or amending a decision, or for granting a new hearing. Upon granting a motion for a new hearing, the Board will take additional testimony and, if a decision has been issued, either amend its findings of fact and conclusions or law or issue a new decision.

(b) *Procedure.* Any motion under 6101.26 (Rule 26) shall comply with the provisions of 6101.8 (Rule 8) and shall set forth:

(1) The reason or reasons why the Board should consider the motion; and

(2) The relief sought and the grounds therefor. If the Board concludes that the reasons asserted for its consideration of the motion are insufficient, it may deny the motion without considering the relief sought and the grounds asserted therefor. If the Board grants the motion, it will issue an appropriate order which may include directions to the parties for further proceedings.

(c) *Time for filing.* In an appeal or petition, a motion for reconsideration, to alter or amend a decision or order, or for a new hearing shall be filed within 30 calendar days after the date the moving party receives the decision or order. In an application, such a motion shall be filed within 7 working days after the date the moving party receives the decision or order. Not later than 30 calendar days after issuance of a decision or order, the Board may, on its own initiative, order reconsideration or a new hearing or alter or amend a decision or order for any reason that would justify such action on motion of a party.

(d) *Effect of motion.* A motion pending under 6101.26 (Rule 26) does not affect the finality of a decision or suspend its operation.

**6101.27 Relief from decision or order [Rule 27].**

(a) *Grounds.* The Board may relieve a party from the operation of a final decision or order for any of the following reasons:

(1) Newly discovered evidence which could not have been earlier discovered, even through due diligence;

(2) Justifiable or excusable mistake, inadvertence, surprise, or neglect;

(3) Fraud, misrepresentation, or other misconduct of an adverse party;

(4) The decision has been satisfied, released, or discharged, or a prior decision upon which it is based has been reversed or otherwise vacated, and it is no longer equitable that the decision should have prospective application;

(5) The decision is void, whether for lack of jurisdiction or otherwise; or

(6) Any other ground justifying relief from the operation of the decision or order.

(b) *Procedure.* Any motion under 6101.27 (Rule 27) shall comply with the provisions of 6101.8 and 6101.26(b) (Rules 8 and 26(b)), and will be considered and ruled upon by the Board as provided in 6101.26 (Rule 26).

(c) *Time for filing.* Any motion under 6101.27 (Rule 27) shall be filed as soon as practicable after the discovery of the reasons therefor, but in any event no later than 120 calendar days after the date of the moving party's receipt of the decision or order from which relief is sought. In considering the timeliness of a motion filed under 6101.27 (Rule 27), the Board may consider when the grounds therefor should reasonably have been known to the moving party.

(d) *Effect of motion.* A motion pending under 6101.27 (Rule 27) does not affect the finality of a decision or suspend its operation.

**6101.28 Full Board consideration [Rule 28].**

(a) *Requests by parties.* (1) A request for full Board consideration is not favored. Ordinarily, full Board consideration will be ordered only when it is necessary to secure or maintain uniformity of Board decisions, or the matter to be referred is one of exceptional importance.

(2) A request for full Board consideration may be made by either party on any date which is both after the panel to which the case is assigned has issued its decision on a motion for reconsideration or relief from decision and within 10 working days after the date on

which that party receives that decision. Any party making a request for full Board consideration shall state concisely in the motion the precise grounds on which the request is based.

(3) Promptly after such a request is made, a ballot will be taken among the judges; if a majority of them favors the request, the request will be granted. The result of the vote will promptly be reported by the Board through an order. The concurring or dissenting view of any judge who wishes to express such a view may issue at the time of such order or at any time thereafter.

(b) *Initiation by Board.* A majority of the judges may initiate full Board consideration of a matter at any time while the case is before the Board, no later than the last date on which any party may file a motion for reconsideration or relief from decision or order, or if such a motion is filed by a party, within ten days after a panel has resolved it. The parties will be informed promptly, through an order, of the matter to be considered by the full Board. The concurring or dissenting view of any judge who wishes to express such a view may issue at the time of such order or at any time thereafter.

(c) *Decisions.* If full Board consideration is granted at the request of a party or initiated by the Board, a vote shall be taken promptly on the pending matter. After this vote is taken, the Board shall promptly, by order, issue its determination, which shall include the concurring or dissenting view of any judge who wishes to express such a view.

(d) *Effect of motion.* A pending request for full Board consideration, whether initiated by a party or by the Board, does not affect the finality of a decision or suspend its operation.

**6101.29 Clerical mistakes; harmless error [Rule 29].**

(a) *Clerical mistakes.* Clerical mistakes in decisions, orders, or other parts of the record, and errors arising therein through oversight or inadvertence, may be corrected by the Board at any time on its own initiative or upon motion of a party on such terms, if any, as the Board may prescribe. During the pendency of an appeal to another tribunal, such mistakes may be

corrected only with leave of the appellate tribunal.

(b) *Harmless error.* No error in the admission or exclusion of evidence, and no error or defect in any ruling, order, or decision of the Board, and no other error in anything done or not done by the Board will be a ground for granting a new hearing or for vacating, reconsidering, modifying, or otherwise disturbing a decision or order of the Board unless refusal to act upon such error will prejudice a party or work a substantial injustice. At every stage of the proceedings the Board will disregard any error or defect that does not affect the substantial rights of the parties.

**6101.30 Award of fees and other expenses [Rule 30].**

(a) *Applications for fees and other expenses.* An appropriate party in a proceeding before the Board may apply for an award of fees and other expenses, including if applicable an award of attorney fees, under the Equal Access to Justice Act, 5 U.S.C. 504, or any other provision that may entitle that party to such an award, subsequent to the Board's decision in the proceeding. Until it issues a decision, the Board will not consider a request for fees and other expenses.

(b) *Time for filing.* A party seeking an award may submit an application no later than 30 calendar days after a final disposition in the underlying appeal. The Board's decision becomes final (for purposes of 6101.30 [Rule 30]) when it is not appealed to the United States Court of Appeals for the Federal Circuit within the time permitted for appeal or, if the decision is appealed, when the time for petitioning the Supreme Court for certiorari has expired. An application for fees or other expenses may not be filed before the Board's decision is final; a request for fees or other expenses made before the Board's decision is final does not constitute an application.

(c) *Application requirements.* An application for fees and other expenses shall:

(1) Identify the applicant and the appeal for which fees and other expenses are sought, and the amount being sought;